

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS GOOLSBY,
Plaintiff,

v.

G. D. LEWIS, *et al.*,
Defendants.

Case No. [13-cv-03366-JD](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff's complaint was dismissed with leave to amend and he has filed an amended complaint.

DISCUSSION

I. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Although a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

II. LEGAL CLAIMS

Plaintiff presents many claims of retaliation and denial of access to the courts following his transfer to Pelican Bay State Prison (“PBSP”).¹

“Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). *Accord Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison officials under § 1983 for retaliation must allege that he was retaliated against for exercising his constitutional

¹ Plaintiff’s original complaint was dismissed with leave to amend because he presented many unrelated claims arising out of separate incidents. While the amended complaint presents fewer allegations, it is still disjointed, and the Court has focused on the primary claims. Plaintiff allegations of retaliation, excessive force, and denial of medical care relating to the April 2013 incident are dismissed from this action without prejudice and plaintiff may file a separate action with those claims. “[M]ultiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different defendants belong in different suits,” not only to prevent the sort of “morass” that a multi-claim, multi-defendant suit can produce, “but also to ensure that prisoners pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of required fees.” *Id.* (citing 28 U.S.C. § 1915(g)).

1 rights and that the retaliatory action did not advance legitimate penological goals, such as
2 preserving institutional order and discipline).

3 A prisoner must at minimum allege that he suffered harm, since harm that is more than
4 minimal will almost always have a chilling effect. *Rhodes*, 408 F.3d at 567-68 n.11; *see Gomez v.*
5 *Vernon*, 255 F.3d 1118, 1127-28 (9th Cir. 2001) (prisoner alleged injury by claiming he had to
6 quit his law library job in the face of repeated threats by defendants to transfer him because of his
7 complaints about the administration of the library).

8 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S.
9 343, 350 (1996). To establish a claim for any violation of the right of access to the courts, the
10 prisoner must prove that there was an inadequacy in the prison's legal access program that caused
11 him an actual injury. *See Lewis*, 518 U.S. at 350-55. To prove an actual injury, the prisoner must
12 show that the inadequacy in the prison's program hindered his efforts to pursue a non-frivolous
13 claim concerning his conviction or conditions of confinement. *See id.* at 354-55.

14 Plaintiff states he was transferred from his prior prison to PBSP in retaliation for his legal
15 activities, which is the subject of a separate suit. Plaintiff has pled sufficient allegations of
16 retaliation against defendants Mills, Barnts, and Soderland that they took adverse actions against
17 plaintiff for engaging in protected conduct.

18 Plaintiff's allegations of denial of access to the courts fail to state claim. Plaintiff has not
19 described the substance of his other court cases, if they were non-frivolous and related to his
20 conviction or conditions of confinement, and how he suffered a legal injury. Nor can plaintiff
21 present a denial of access to the courts relating to his pursuing legal cases for other inmates at
22 other prisons. The complaint is dismissed with leave to amend. If plaintiff files a second
23 amended complaint he must include the claims against Mills, Barnts, and Soderland because an
24 amended complaint completely replaces the prior complaint. *See Ferdik v. Bonzelet*, 963 F.2d
25 1258, 1262 (9th Cir. 1992). Failure to file a second amended complaint will result in this case
26 proceeding only against Mills, Barnts, and Soderland.

CONCLUSION

1. The amended complaint is **DISMISSED** with leave to amend. The second amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words **SECOND AMENDED COMPLAINT** on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: June 20, 2014



JAMES DONATO
United States District Judge

United States District Court
Northern District of California